

POLICE/SHERIFF'S DEPARTMENT		GENERAL ORDERS	
SUBJECT: Bias Reduction		NUMBER: 2-1A	
EFFECTIVE DATE: July 1, 2003		REVIEW DATE: <i>annually</i>	
AMENDS/SUPERSEDES:		APPROVED: _____ Chief of Police/Sheriff	
VLEPSC STANDARDS: ADM.02.07			

NOTE:

This directive is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS

bias
constitutional rights
discrimination
harassment
probable cause
profile
reasonable suspicion
traffic stop; pretextual

I. POLICY

We are committed to a respect for constitutional rights in the performance of our duties. Our success is based on the respect we give to our communities, and the respect citizens observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, national origin, ethnicity, age, or religion. All people carry biases: in law enforcement, however, the failure to control our biases can lead to illegal arrests, searches, and detentions, thus thwarting the mission of our department. Most importantly, actions guided by bias destroy the trust and respect essential for our mission to succeed. We live and work in communities very diverse in population: respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions, particularly stops of citizens (for traffic and other purposes), investigative detentions, arrests, searches and seizures of persons or property, shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions which support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of citizens. Officers shall not stop, detain, arrest, search, or attempt to search anyone based **solely** upon the person's race, sex, sexual orientation, gender, national origin, ethnicity, age, or religion. Officers shall base all such actions on a reasonable suspicion that the person or an occupant of a vehicle committed an offense.

All departmental orders are informed and guided by this directive. Nothing in this order limits non-enforcement contacts between officers and citizens.

II. PURPOSE

The purpose of this order is to provide general guidance on reducing the presence of bias in law enforcement actions, to identify key contexts in which bias may influence these actions, and emphasize the importance of the constitutional guidelines within which we operate.

III. DEFINITIONS

Most of the following terms appear in this order. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

A. Bias

Prejudice or partiality which may be based on preconceived ideas, a person's upbringing, culture, experience, or education.

B. Biased policing

Stopping, detaining, searching, or attempting to search, or using force against a person based upon his or her race, sex, sexual orientation, gender, national origin, ethnicity, age, or religion in violation of constitutional safeguards.

C. Ethnicity

A cluster of characteristics which may include race but also cultural characteristics or traits which are shared by a group with a common experience or history.

D. Gender

Unlike sex, a psychological classification based on cultural characteristics or traits.

E. Pretextual

Refers to the officer's pretext or reason for making a stop.

F. Probable cause

Facts or apparent facts and circumstances within an officer's knowledge and of which the officer had reasonable, trustworthy information to lead a reasonable person to believe that an offense has been or is being committed, and that the suspect has committed it.

G. Profile

A legitimate profile, sanctioned by the department, is a very specific attribute, or cluster of attributes or characteristics, that form the basis for reasonable suspicion of criminality. A profile is only valid for a limited time and under limited circumstances, most often for drug trafficking. These attributes or characteristics are established in writing based on considerable training and experience. A legitimate profile will not be based solely on a person's race, sex, sexual orientation, gender, national origin, ethnicity, age, or religion.

H. Race

A category of people based on common physical or genetic traits or characteristics. As distinct from ethnicity, race only refers to physical characteristics sufficiently distinctive to group people under a classification.

I. Racial profiling

The unlawful detention, interdiction, or other disparate treatment of any person on the basis of their racial or ethnic status or characteristics. "Racial profiling" refers to practices prohibited by this department.

J. Reasonable suspicion

Articulate, objective facts which lead an experienced officer to suspect that a person stopped has committed, is committing, or may be about to commit a crime. A well-founded suspicion is based on the totality of the circumstances and does not exist unless it can be articulated. Reasonable suspicion supports a stop of a

citizen. Courts require that stops based on reasonable suspicion be "objectively reasonable."

K. Sex

A biological classification, male or female, based on physical and genetic characteristics.

L. Stop

The detention of a subject for a brief period of time, based on reasonable suspicion. A stop is **investigative detention**. Refer to GO #2-3 for a description of the circumstances which may give rise to reasonable suspicion for a stop. A citizen may not conclude a stop; the officer concludes the stop when his or her articulable concerns are satisfied.

III. PROCEDURES

A. Contexts of bias

Bias occurs most often in field interviews, stops (for traffic or investigative detention), or in narcotics cases. The following topics are those which most frequently relate to bias, with the relevant sample directive in parenthesis. The orders indicated should be consulted for detailed guidance.

1. Arrests (GO #2-4)
2. Checkpoints (GO #2-12, -19)
3. Complaints/internal investigations (RR #1-7, -9)
4. Field interviews (GO #2-3)
5. Interviews/interrogations (GO #2-1, -14)
6. Juvenile procedures (curfew) (GO #2-29)
7. Narcotics enforcement (GO #2-17)
8. Patrol tactics (GO #2-12)
9. Personnel evaluation (RR #1-6)
10. Prisoner handling/transportation (GO #2-8)
11. Searches/seizures (GO #2-1)
12. Traffic stops (GO #2-19)
13. Training/field training manuals (RR #1-12)
14. Use of force (GO #2-6)
15. Searches Incident to Arrest (GO #2-2)

[Note: These orders are found in the Department of Criminal Justice Services Sample Directives for Virginia Law Enforcement Agencies, available on the DCJS website:

B. General responsibilities

1. Officers are prohibited from stopping, detaining, searching or arresting anyone **solely** because of the person's race, sex, sexual orientation, gender, national origin, ethnicity, age, or religion. These characteristics, however, may form part of reasonable suspicion or probable cause when officers are seeking a suspect with one or more of these attributes. See GO #2-1 for further discussion.
2. Reasonable suspicion or probable cause shall form the basis for any enforcement actions or decisions. Citizens shall only be subjected to stops, seizures, or detention upon reasonable suspicion that they have committed, are committing, or are about to commit an offense. Officers shall document the elements of reasonable suspicion and probable cause in appropriate reports.
3. Officers shall observe all constitutional safeguards and shall respect the constitutional rights of all citizens.
 - a. As traffic stops furnish a primary source of bias-related complaints, officers shall have a firm understanding of the warrantless searches allowed by law, particularly the use of consent. See GOs #2-1, -5, and -19 for further guidance. How the officer disengages from a traffic stop may be crucial to a citizen's perception of fairness or discrimination.
 - b. Officers shall not use the refusal or lack of cooperation to justify a search of the citizen's person or vehicle or a prolonged detention once reasonable suspicion has been dispelled.
4. All personnel shall treat citizens with the same courtesy and respect that they would have citizens observe to department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
 - a. Personnel shall facilitate citizens' access to other governmental services whenever possible, and shall actively provide referrals to other appropriate agencies.
 - b. All personnel shall courteously accept, document, and forward to the sheriff/chief of police any complaints made by citizens against the department. Further, officers shall provide information on the

complaints process and shall give copies of "How to Make a Complaint" when appropriate.

[Note: Not every agency uses a "How to Make a Complaint" form. Some agencies use the same form for a dual purpose, that of recording complaints or commendations. See RR #1-9 for a sample "How to Make a Complaint" form.]

- c. Some information collected by or stored at the department may be releasible to the public. Information dissemination shall be accomplished per the requirements of RR #1-13 (responses to information requests).
5. When feasible, personnel shall offer explanations to citizens of the reasons for enforcement actions or other decisions that bear on citizens' well-being unless the explanation would undermine an investigation or jeopardize an officer's safety. When concluding an encounter with a citizen, personnel shall thank him or her for cooperating.
6. When feasible, all personnel shall identify themselves by name. When a citizen requests the information, personnel shall give their departmental identification number, name of the immediate supervisor, or any other reasonable information.
7. Unless required by law, a citizen's refusal to cooperate or provide information does not create any justification for further enforcement action. Refusal to sign a summons or failure to obey a lawful order of an officer are examples of exceptions to voluntary cooperation.
8. All personnel are accountable for their actions. Personnel shall justify their actions when required.

C. Supervisory responsibilities

1. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties. Supervisors shall identify and correct instances of bias in the work of their subordinates.
2. Supervisors shall use the disciplinary mechanisms of the department to ensure compliance with this order and the constitutional requirements of law enforcement.
3. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are key to managing community

trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community's trust in law enforcement.

4. Supervisors are reminded that biased enforcement of the laws engenders not only mistrust of law enforcement, but increases safety risks to personnel. Lack of control over bias also exposes the department to liability consequences. Supervisors shall be held accountable for repeated instances of biased enforcement of their subordinates.
5. Any criminal profiling requires supervisory participation and oversight. Any criminal profiles used in enforcement shall be authorized by the sheriff/chief of police per a detailed, written analysis. All criminal profiles shall be authorized in writing and shall be self-cancelling after a specified date. Upon cancellation, supervisors shall prepare a report on the utility and results of the profile and submit it to the sheriff/chief of police via the chain of command. For further information on profiling in narcotics cases, see GO #2-12 (discussion under "indicators").
6. Supervisors shall ensure that all enforcement actions are duly documented per departmental policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable.

[Note: Each agency has different documentation requirements. Required documentation may include arrest and investigative reports, summonses, field interview cards, or field notes.]

7. Supervisors shall facilitate the filing of any citizens' complaints about law enforcement service.

[Note: In larger agencies, supervisors may not have a role in the investigation of complaints against personnel. In smaller agencies, supervisors may conduct the internal investigation. Suggested additional wording for smaller agencies in which supervisors perform this function: "Supervisors shall ensure that all complaints are recorded, investigated, and that complainants shall be kept informed of the progress and results of their complaints."]

D. Pretextual traffic stops

1. Pretextual traffic stops, or those in which the explanation to the citizen of the reason for the stop may not reflect all of the officer's actual reasons, are legal and in some circumstances are necessary.

2. Note that the officer's subjective intent (pretext) is irrelevant when stopping a vehicle; the legitimacy of the stop will be gauged by its objective reasonableness. As long as an officer has at least one legal reason for stopping a vehicle (such as a minor traffic violation), then it is irrelevant that the officer had some suspicion unrelated to the traffic stop.

[Note: Agencies may specify that officers record both the pretext for the stop as well as the explanation given to the citizen. Stops, pretextual or not, require articulable suspicion by the officer.]

E. Disciplinary consequences

Actions prohibited by this order shall be cause for disciplinary action, up to and including dismissal.

[Note: Outline specific disciplinary consequences to bias-based enforcement. Refer to RR 1-7, -9 for detailed guidance on complaints and internal affairs procedures.]

F. Training

Officers shall receive ongoing training in proactive enforcement tactics, including training in officer safety, the laws governing search and seizure, and all personnel shall receive ongoing training in interpersonal communications skills, cultural, racial, and ethnic diversity, and courtesy.

[Note: In addition to any academy or formal training on bias-reduction techniques, agencies must train personnel on the content of any anti-bias orders as part of an in-service training regimen on all departmental orders. Outline the training program here. Further, anti-bias training may become one component of diversity training for personnel.]